EVIDENCE — *RES GESTAE* — CONTEMPORANEOUSNESS OF THE DECLARATION AND THE ACT. — In a suit on an accident insurance policy the evidence showed that the deceased was seized with a violent fit of coughing while brushing his teeth. As soon as he could speak, some fifteen minutes later, he told his wife that bristles from the tooth brush had choked him. *Held*, that this was admissible to show the cause of death as part of the *res gestae*. *Eby* v. *Travelers' Ins. Co.*, 102 Atl. 209 (Pa.).

The principal case raises the question of how nearly contemporaneous with the act in issue a declaration must be to be admissible in evidence as part of the *res gestae*. Some of the authorities virtually require that it be simultaneous. *Regina* v. *Bedingfield*, 14 Cox C. C. 341; *Parker* v. *State*, 136 Ind. 284, 35 N. E. 1105. The other authorities allow such declarations to come in, when in the opinion of the trial judge, they have that degree of spontaneity which negatives premeditation and hence possible fabrication. *Insurance Co.* v. *Mosley*, 8 Wall. (U. S.) 397; *Washington, etc. Co.* v. *McLane*, 11 App. D. C. 220. See WIGMORE, EVIDENCE, § 1750. Under the former rule time is apparently the determinant, and logically the most deliberate of self-serving evidence would be admissible if made simultaneously with the act. The latter rule makes the absence of deliberation the deciding factor, time being but an element in that consideration. See CHAMBERLAYNE, EVIDENCE, § 3007. The principal case is in accord with the second view and seems especially supportable in analogy with the comparatively recent extension of the spontaneity principle to declarations made by a person rendered unconscious, upon regaining consciousness, even though considerable time has elapsed. *Britton* v. *Washington, etc. Co.*, 59 Wash. 440, 110 Pac. 20; *Paris, etc. Co.* v. *Calvin*, 103 S. W. 428 (Texas); *Missouri, etc Co.* v. *Moore*, 24 Texas Civ. App. 489, 59 S. W. 282. *Cf. Sutton* v. *Southern Ry.*, 82 S. C. 345, 64 S. E. 401; *Christopherson* v. *Chicago, etc. Co.*, 135 Iowa, 409, 109 N. W. 1077.

FORFEITURE — EQUITY — SUIT TO QUIET TITLE FOR BREACH OF CONDITION SUBSEQUENT. — The plaintiff conveyed land to the grantor of the defendant, subject to building restrictions, and provided in the conveyance that "any violation of the foregoing conditions and instructions by the grantee, his heirs or assigns, shall work a forfeiture to all title in and to said lots." The defendant built contrary to the restrictions, and the plaintiff filed a bill in equity to quiet title. *Held*, that although equity would not work a forfeiture, the decree should be granted, since the title was already forfeited by the breach. *Sanderson* v. *Dee*, 168 Pac. 1001 (Okla.).

A condition subsequent, which provides that a given estate may be terminated, on breach of the condition, should be distinguished from a conditional limitation, which provides that the estate shall continue until the happening of an event. See 4 KENT, COMMENTARIES, 126 (*). Although in the latter case the happening of the event immediately vests the estate in the remainderman, breach of a condition subsequent does not *ipso facto* vest the estate in the grantor. Until the grantor enters or sues in ejectment, title remains in the grantee. *Lewis* v. *Lewis*, 74 Conn. 630, 51 Atl. 854; *Miller* v. *Levi*, 44 N. Y. 489. If the condition in the principal case were in favor of a stranger, it would be construed as a conditional limitation, to prevent the heir of the grantor from defeating the remainder by not entering. *Proprietors, etc.* v. *Grant*, 3 Gray (Mass.), 142. See 2 BLACKSTONE, COMMENTARIES, 155 (*). But, being in favor of the grantor, the language used seems to import a condition subsequent. *Cf. Ruch* v. *Rock Island*, 97 U. S. 693. Although equity will not work a forfeiture, it will protect legal title, even though acquired by forfeiture. *Lowrey* v. *Finkleslon*, 149 Wis. 222, 134 N. W. 344; *Shannon* v. *Long*, 180 Ala. 128, 60 So. 273. But where title is not yet in the grantor, a decree quieting title amounts to working a forfeiture, and would seem therefore to be improper.

Donnelly v. *Eastes*, 94 Wis. 390, 69 N. W. 157; *Birmingham* v. *Lesan*, 77 Me. 494, 1 Atl. 151.

FRANCHISES — RIGHT TO ENJOIN COMPETITOR ILLEGALLY DOING BUSINESS WITHOUT A LICENSE. — Bill to enjoin defendant from operating a jitney-bus line in competition with complainant on ground that defendant's franchise was invalid because not signed by the mayor. *Held*, that the complainant is entitled to a perpetual injunction. *Memphis Street Ry. Co.* v. *Transit Co. et al.*, 198 S. W. 890 (Tenn.).

A franchise confers privileges which are exclusive in their nature against all persons upon whom similar rights have not been conferred. *Elizabethtown Gas Light Co.* v. *Green*, 46 N. J. Eq. 118, 18 Atl. 844, 846. The rights are essentially in all respects property. *City of Louisville* v. *Cumberland Telephone & Telegraph Co.*, 224 U. S. 649; *City of Morristown* v. *East Tenn. Telephone Co.*, 115 Fed. 304. Any person attempting to exercise such rights without legislative sanction invades the private property rights of one holding a valid franchise and may be restrained at the instance of the owner. *Bartlesville Electric Light & Power Co.* v. *Bartlesville Interurban Ry. Co.*, 26 Okla. 453, 109 Pac. 228; *Millville Gas Light Co.* v. *Vineland Light & Power Co.*, 72 N. J. Eq. 305, 65 Atl. 504. In a few jurisdictions the courts have proceeded on the ground that the complainant seeks to prevent competition with it, and have refused to grant an injunction. *Coffeyville Gas Co.* v. *Citizens Natural Gas Co.*, 55 Kan. 173, 40 Pac. 326; *Market R. Co.* v. *Central R. Co.*, 51 Cal. 583. Whether competition is so desirable as to justify this refusal of protection to a property right is questionable. Text-writers do not favor the doctrine. See DILLON, MUNICIPAL CORPORATIONS, § 1244.

INSANE PERSONS — GUARDIANSHIP AND PROTECTION — RIGHT OF GUARDIAN OF INSANE WIDOW TO DISSENT FROM WILL. — By statute a widow may elect whether to take under her husband's will or by descent (1903, ME. REV. STAT. c. 77, § 13). The guardian of an insane widow petitioned the probate court to be allowed to elect against the will. *Held*, that neither the guardian nor the court could exercise the widow's right for her. *Clark* v. *Boston Safe Deposit & Trust Co.*, 102 Atl. 289 (Me.).

A widow's right of election, being personal, does not survive to her heirs or personal representatives. *Donald* v. *Portis*, 42 Ala. 29; *Welch* v. *Anderson*, 28 Mo. 293. A few jurisdictions hold in accord with the principal case that if the widow is incompetent the right is defeated. *Crenshaw* v. *Carpenter*, 69 Ala. 572; *Lewis* v. *Lewis*, 29 N. C. 72. But the great weight of authority is that if the widow is incompetent the right may be exercised by a court of equity or by the guardian under the supervision of some court. *Penhallow* v. *Kimball*, 61 N. H. 596; *Kennedy* v. *Johnston*, 65 Pa. 451; *In re Andrews' Estate*, 92 Mich. 449, 52 N. W. 743; *Trower* v. *Spady*, 117 Va. 173, 83 S. E. 1049. See PAGE, WILLS, 719. This result has been generally reached by judicial decision, but in a few states it has been enacted by statute. See 1910, OHIO GEN. CODE, § 19574; 1908, N. C. REV. CODE, § 3080; MO. REV. STAT. § 355. The court in making its election leans toward the will. *In re Bringhurst*, 250 Pa. 9, 95 Atl. 320. But it considers the interests of the incompetent party and no one else. *Spruance* v. *Darlington*, 7 Del. Eq. 111, 30 Atl. 663. The decision of the principal case seems to be an example of the hostility of many courts toward statute law.

INTERNATIONAL LAW — LEGATIONS AND DIPLOMATIC AGENTS — IMMUNITY OF DIPLOMATIC AGENTS FROM SUITS: EXTENT OF WAIVER. — The defendant, an accredited minister of a foreign sovereign, having waived his diplomatic immunity, was surcharged with a sum of money upon his accounts in ad-